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The Accountability of the Executive to the Legislature

[Lima Declaration](#)

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Thirty-eight years ago, in my first year as a Member of the Congress of the United States, I visited Peru--Lima, Cuzco, Machu Picchu--and I am pleased to be back, this time to take part in a conference on a most important subject, corruption. And I thank Peter Eigen, Chairman of Transparency International, and Fritz Heimann, Chairman of Transparency International USA, for having invited me to talk about one aspect of the struggle against corruption, "The Accountability of the Executive to the Legislature."

Allow me to tell you from what perspective I speak.

Before becoming President of New York University in 1981, I served for twenty-two years, from 1959 to 1981, as a Member of the United States House of Representatives. A Democrat, I represented the Third Congressional District of Indiana, in the American Mid-west. Centred on the town of South Bend, my former constituency is perhaps best known to many of you as the home of the University of Notre Dame.

I served in Congress during the presidencies of six occupants of the White House: three Republicans: Eisenhower, Nixon and Ford; and three Democrats: Kennedy, Johnson and Carter.

I was first elected to Congress, on my third attempt, in 1958, and was defeated in my last campaign, in 1980, in the landslide victory of Ronald Reagan over Jimmy Carter.

As you are aware, members of the U.S. House serve fixed terms of two years. So I was a candidate for election fourteen times. I add that between elections, I was an assistant, in 1995 and '96, to Adlai E. Stevenson in his second campaign for president. My point obviously is that I have spent nearly thirty years in electoral politics in the United States.

And that I maintain a lively interest in politics, domestic and foreign, is one reason I'm pleased to be with you in Lima this week.

As Peter Eigen and Fritz Heimann know, two years ago, I chaired a conference at Ditchley Park, near Oxford, England, on "Corruption in Democratic Societies." In preparing for that meeting and since, I've been struck by the sharp rise in interest in the issue. To make my point, one can scarcely pick up a copy of the respected Financial Times without seeing, at least one or two articles about corruption someplace in the world.

I have also been struck by the burgeoning interest in the phenomenon of corruption not only on the part of journalists, business leaders and politicians but also by scholars specialising in its study. It appears that an entire new academic subculture has developed-- "Corruption Studies"!

Here let me list only a few illustrations of the enhanced visibility of the issue that brings us to-ether in Lima this week.

- "Sleaze," that elegant English phrase, on the part of members of the British House of Commons who took cash and other emoluments in exchange for services rendered to business interests.
- Opinion polls showing voters believe corruption to be the second biggest problem in Argentina.
- Concern among foreign investors about threats of extortion by the Russian "Mafia."

- Fears in Hong Kong that corruption will move over the border from mainland China even as the son of a former Chinese Politburo member is sentenced to prison for accepting bribes and misusing public funds.
 - Scandal after scandal among major Japanese financial houses.
 - Revelations of payoffs to the former Prime Minister of Ireland.
 - Reports of violation of Federal campaign laws in the United States by candidates of both major political parties.
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- Evidence of involvement in illegal drug trafficking by high government officials in Colombia and Mexico.

Now against this litany of corruption on nearly every continent in the world--and everyone in this room could add examples--I observe a most significant development. Several international organisations have in recent months been taking steps to combat corruption.

That the OECD (Organisation for Economic Cooperation and Development) last May agreed to negotiate a treaty to make bribery of foreign public officials a crime in their respective member states by the end of next year demonstrates that concern about the issue has gone beyond rhetoric.

The European Commission also in May adopted a statement urging- its fifteen member states and the eleven states that have applied for membership to act to criminalize bribery of EU officials.

Another sign of advance: James Wolfensohn, President of the World Bank, and Michel Camdessus, Managing Director of the International Monetary Fund, have declared in powerful language that their institutions will suspend loans to countries where government corruption is damaging economic development. Kenya has already felt the sting of this new attitude. And, of course, as we meet in Peru, I must cite the 1996 Inter- American Convention Against Corruption, which calls for making a crime of bribery and urges regional cooperation to fight it.

And there are still other instances of steps to battle corruption on the part of multinational organisations. I must note that in winning action in all four of the examples I have given you, Transparency International played a key role, and I applaud Peter Eigen, Fritz Heimann, TI's Managing Director Jeremy Pope and other TI leaders for their outstanding work. This conference is a splendid example of their efforts.

Now I want to say a word about why I myself have become so keenly interested in the issue of corruption.

First, I have already told you that I was fourteen times a candidate for election to public office and served for more than two decades in the U.S. House of Representatives. There I helped write the 1974 campaign finance laws during the post-Watergate effort to curb corrupt practices in campaign fundraising. I shall shortly speak of my experience in Congress as it is, of course, directly relevant to the subject of this paper.

A second reason for my interest in the problem of corruption is that I sit on the boards of several corporations that consider investment in other countries, and I've observed that on occasion, an issue in such decisions is "transparency."

Third, since 1993, I have been Chairman of the National Endowment for Democracy, or NED, as it is known, an unusual entity in the American political firmament. Although financed by the Federal government, NED is a non-governmental organisation. Its purpose is to promote democracy in countries where it does not exist or is struggling to emerge.

The National Endowment for Democracy makes grants to private organisations that are committed to free and fair elections, the rule of law, independent media, vigorous non-governmental organisations, a market economy and the other components of a genuinely democratic culture.

I note that a number of organisations that have received grants from the National Endowment for Democracy have targeted their efforts on reducing corruption in election campaigns or among government officials. Clearly, these grantees are convinced that corruption is anathema to democracy.

Certainly, my own deeply held view is that if democratic forms of government and market economies are to flourish, indeed, survive, we need aggressive steps to fight corruption. For I need not rehearse for this audience the negative impact of corruption in undermining trust in political institutions and public officials, distorting government policy against the best interests of the majority and impeding economic development. And we all know that the effects of corruption are especially pernicious in emerging, democracies, for the abuse of public office subverts popular confidence in the very idea of self-government.

Now here you must forgive me if I offer an observation about human nature, at least as I have perceived it in a lifetime of experience as a Member of Congress and university president, that is to say, in a lifetime in politics!

As a student at Harvard University fifty years ago, I became acquainted with the writings of the great Protestant theologian, Reinhold Niebuhr. In a small but powerful book, The Children of Light and the Children of Darkness, Niebuhr sharply criticised those who thought human beings were naturally good and who asserted, as for example, did the Marxists, that if only the economic system were changed, human beings would get along with one another in splendid fashion.

Nor did Niebuhr have much sympathy for those who thought man was so evil as to be beyond redemption and, therefore, that only a cynical view of human nature could be sustained.

Instead, Niebuhr coined an aphorism that not only I but many others active in the political life of my country have found accurately, realistically, defines, in the context of a theory of politics, human nature.

Said Niebuhr: "Man's capacity for justice makes democracy possible; man's inclination to injustice makes it necessary."

It is this view of human nature that, I respectfully suggest, shaped the outlook of the Founding Fathers of the Constitution of the United States.

For as James Madison, one of the Founding Fathers of the United States and later president, wrote in the Federalist Papers (51):

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing, a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

The Founding Fathers, therefore, fashioned a Constitution deliberately designed to prevent concentration of authority.

The Founders wanted to create checks and balances by giving many groups and interests many points of access. "Ambition counteracting ambition" would prevent tyrannical concentrations of power.

The Federal system meant that the national and state governments would share certain powers.

A Bill of Rights set forth actions the government should not take.

And, of course, the other fundamental principle was the separation of powers--an executive headed by an elected president; a judiciary, with independent authority; and a bicameral legislative body, Congress.

My remarks today will focus on one relationship, the accountability of the executive branch of government to the legislative, in the context, of course, of curbing the incidence of corruption.

I reiterate that I speak from the viewpoint of one who served in the Congress of the United States and not as a former member of the British House of Commons or the Congress of Peru.

It is essential to understanding my analysis to know that in the United States, Congress does not exist to do whatever a president wants it to do, even when both the Senate and House of Representatives are controlled by the same party as that of the President.

For you must remember that presidents and Congresses are elected separately, by different constituencies and for different periods of service. The President, each of the 100 Senators and 435 Representatives has his own mandate and sense of responsibility to the people. Even when I was Majority Whip of the House of Representatives, then controlled by the Democrats, I did not see myself as an agent of my fellow Democrat who then occupied the White House, Jimmy Carter. Rather, my allegiance ran to the Speaker of the House and my other fellow Democrats there.

To distinguish the American system from the British, our chief executive is not chosen from the legislative majority and, indeed, often does not even belong to the party controlling Congress. This is, of course, precisely the situation today with a Democrat in the White House and Republican majorities in both the Senate and House of Representatives. The White House and Congress are thus occupied by persons often elected for different reasons and by constituencies with varying expectations and demands. Because elected, and by different voters, Senators and Representatives have their own legitimacy. For some Senators and Representatives, the pull of loyalty to a president of their own party is, at times, offset by the demands of their own electoral politics, that is, the considerations of their constituents.

Indeed, the phrase "separation of powers" is misleading as a description of the American Constitutional system. As Richard Neustadt of Harvard has said, ours is an arrangement of "separated institutions sharing powers."

And this observation is crucial to appreciating the prospects for executive accountability to the legislature.

For neither the President nor Congressional leaders can prevail by edict or command. To convince legislators to see things his way, a president must rely on reason and persuasion. Why?

The answer is that Congress has very substantial power in the process of determining government policy. Senators and Representatives do not simply vote on bills; they help decide what goes into them.

For the President to sign a legislative proposal into law, both houses of Congress must approve the measure in identical form.

For the executive branch to spend tax monies, both the Senate and House of Representatives must first pass a measure appropriating funds.

Even then, the role of Congress is not ended. Without confirmation by the Senate, Cabinet officers, ambassadors and many other officials of the executive branch nominated by the President cannot take office. All of you are aware, although you may not agree with, the objection of Senator Jesse Helms, Chairman of the Senate Foreign Relations Committee, responsible for considering ambassadorial nominations, to President Clinton's proposed Ambassador to Mexico, former Massachusetts Governor William Weld.

The same Senator Helms has also blocked Senate approval of important treaties with other countries.

Now these are two examples, with both of which I happen strongly to disagree, of the use by Congress of its powers under the Constitution. My point here is only to illustrate that in the United States, the legislature is not a rubber stamp for the executive.

I must comment on yet another way, aside from writing laws, appropriating money to implement them, considering presidential appointments and ratifying treaties, in which Congress can hold the executive to account. I speak of what we call the oversight function, under which the House and Senate, acting through their several committees, can, through hearings, field trips and investigations, inquire into how effectively the executive branch is administering the laws Congress has approved.

To reiterate, in all these ways--making policy appropriating money and overseeing the implementation of the laws--Congress is able to hold the executive accountable.

Indispensable to the capacity of Congress to carry out these several duties, beyond the authority to do so conferred by the Constitution and, in their separate constituencies, by the voters, is effective access to relevant intelligence and information.

Each member of the U.S. House of Representatives, for example, can have up to eighteen persons on his staff. They assist the Representative, each of whom now has over half a million people in his district, in responding to the request of constituents, advising the Representative on legislation and dealing with officials of the executive branch, lobbyists and the media. And, of course, Senators, serving an entire state, have even more assistants.

Each Committee of the House and Senate and each subcommittee also has staff to help members exercise their legislative responsibilities.

But Capitol Hill staff do not exhaust the access by Senators and Representatives to intelligence.

There are other sources of information and analysis.

Particularly important is the Library of Congress with its Congressional Research Service, staffed by qualified experts in every field with which Congress deals. Their responsibility is to answer questions, develop analyses of legislation and provide information to Congress.

The General Accounting Office is charged by law not only with considering the legality of government management but with evaluating the effectiveness of government programs. That the GAO is expected to perform in independent fashion is indicated by the fact that its head, the Comptroller General of the United States, serves one term of fifteen years. Individual Members of the Senate and House of Representatives as well as congressional committees can call on the GAO, an arm of Congress and not the executive, to investigate programs administered by the executive.

Nor have I spoken of yet another instrument Congress has devised to compensate for the powerful Office of Management and Budget in the executive branch. Created in 1974, the Congressional Budget Office projects the cost of current and proposed programs, forecasts the effects of budget proposals on the economy and estimates the impact of the economy on the government's budget. No longer is Congress solely dependent on the executive for the numbers.

Now what I have been describing to you are government agencies, all outside the executive, that provide analysis and advice to Congress.

Congress also--individual Senators and Representatives, committees and subcommittees--can and does turn to entities outside Government for information and advice. These extra governmental sources include people at universities, think tanks, in business, trade unions and other organisations and interest groups.

Now it must be clear from what I have said that the American way of governing was not designed for peaceful coexistence between the executive and legislative branches. The result has been a process, over two centuries long, of conflict and accommodation, dispute and detente. Even this past summer you have observed the system at work in the negotiations between the Democratic President and the Republican Congress over both tax legislation and the Federal budget.

Although a long-time Member of Congress, I do not want to insist that Congress is always right in this struggle and the President always wrong. For example, I certainly do not agree with most of the positions taken by the present Republican leadership of the U.S. House and Senate. After all, I am a Democrat!

And I would not dare assert that in attempting to hold the executive accountable, Congress always acts in the national interest rather than from parochial concerns. I am making a different point. It is that, at least in the American system, Congress is, in carrying out its Constitutional responsibilities and in making use of the resources I have indicated, exercising, for good or ill, its power to hold the executive branch accountable.

I must, however, add that the question of holding parliamentarians to account and coping with corruption on the part of legislators is also important and worthy of discussion, but in another panel!

Nor do I want to insist that the American arrangement provides for the best relationship between legislature and executive. Scholars, practising politicians and working journalists can multiply examples of the deficiencies in our political system--and do!

On the other hand, by way of contrast to the American separation of powers, a parliamentary democracy is less likely to produce aggressive legislative oversight because those in control of the executive agencies are the allies of the MPs and will discourage criticism. Moreover, a point on which I shall shortly expand, in a parliamentary system, there is not likely to be effective access to adequate staff and other sources of independent information and analysis.

I should be less than candid if I did not tell you that as for a number of years chairman of a congressional subcommittee, I often operated like a prosecuting attorney when conducting hearings on proposed legislation. That is to say, I asked tough questions, particularly when the witness testifying was an official of the executive branch, and still more so if the witness was speaking, on behalf of President Richard Nixon!

Now what are the conclusions I arrive at in considering, in the battle against corruption, the role of the legislature in holding the executive accountable? It seems to me absolutely imperative to bolster the capacity of the legislature vis-à-vis the executive. Fully aware that I reflect the bias and experience of an American Congressman, I nonetheless believe it essential--at least in respect of curbing corruption by the executive--that the legislature be armed with appropriate Constitutional authority, sufficient staff resources, effective access to relevant information and intelligence and the political will to challenge, where necessary, the executive.

I have said that in the American system, Congress is engaged in:

1. making public policies;
2. providing funds to carry them out; and
3. overseeing their proper implementation.

It seems evident that critical to the functioning of any modern legislature is a legislative reference service. As Alex Inkeles of the Hoover Institution at Stanford University notes:

... In the complex economic, demographic, and political situation of the modern world, legislators are in need of quality technical information.... To legislate well and effectively, legislatures need their own sources of basic social, political, and economic information. Newly ensconced legislators in democratising countries, however, often find themselves without a library, or a repository of documents, or a mechanism for identifying and obtaining sources of information located elsewhere in the government and in the society. They lack research assistants who could collect and collate such information as is available, and specialists who could interpret and evaluate such data as may be collected.^[1]

A legislative body should also enhance its policymaking and oversight capacities by seeking high quality and timely information and advice from sources outside the legislature--universities, industry and other nongovernmental institutions. A legislature must make greater use of informal advisory groups, meetings and conferences. Such mechanisms provide an invaluable forum for free exchange of ideas, opinions and alternatives not always available from the executive.

Indeed, as we all know, the executive branch usually enjoys superior access to information and often has incentives not to share that knowledge, especially if it reflects poorly on the executive. The cause of combating corruption is also often served when the legislature makes information from hearings and reports more readily available to the interested public.

And here I must observe that even before we reach the year 2000, the next millennium, legislative bodies must equip themselves with computer, fax and other telecommunications facilities. We are in the age of the Internet and the World Wide Web. Legislators and legislatures should live there, too!

Because my assignment today is to discuss accountability of the executive to the legislature, I have not addressed the great importance in ensuring such accountability of the other branch of government, the judiciary, nor have I spoken of the crucial responsibility in keeping a close eye on what governments do and thereby fighting corruption, of both the media and nongovernmental associations.

If the courts are the creatures of the executive branch and not capable of making independent decisions, free of interference by either the executive or the legislature, the doors to corruption will have been thrown open.

In like fashion, if the executive, in order to discourage or eliminate criticism, seeks to crush free and independent newspapers, magazines, radio and television, the forces of corruption will thereby have been strengthened.

To ensure accountability by the executive and diminish the prospect of corruption, a nation must have not only a legislature that refuses to be acquiescent but also an independent judiciary, media free of government control and healthy and vigorous nongovernmental associations. One institution alone cannot secure the blessings of democracy and freedom and reduce the prospects of corruption. We require a network of agencies, both within and outside government.

For although democracy in general is associated with more moderate levels of corruption, there is not one blueprint for combating it. Democracy and relatively modest degrees of corruption go hand-in-hand not because of any one factor, but of several--civil society, checks and balances, elections. These elements of a genuinely democratic culture must work in tandem to produce a relationship between state and society, public official and private citizen, that is fair and open.

You and I know that all too often, when in some countries, a president has been elected, he will assume that in consequence, he alone embodies the will of the people and can ride roughshod over Congress, the courts, the media, all of which he will regard as nothing but nuisances. And such rulers will see little difference between defining the public good as what is good for themselves, their families and for their political allies--an attitude, that is an "open Sesame" to corruption.

I cannot pass informed judgement on the political situation in this country; I have just arrived. Yet it is obvious to any reader of such respected newspapers as the Wall Street Journal and the Financial Times that in both news reports and editorials the President of Peru is being sharply attacked for, in the words of the Financial Times, "his lack of tolerance for the opposition and healthy criticism that is an integral part of democracy..."^[2]

Added the Wall Street Journal in July, "A growing number of critics say Mr. Fujimori has turned his formidable material and intelligence apparatus against conventional political opponents and subverted the country's already feeble democratic institutions in order to prolong his hold on power."

The National Endowment for Democracy

Now I want to tell you a little about the National Endowment for Democracy, or NED, the Board of which, as I've said, I have the privilege to serve as Chairman.

One of the principal vehicles through which American Presidents, Senators and Representatives of both political parties seek to promote free, open and democratic societies is the National Endowment for Democracy.

Founded in 1983 by a Republican President, Ronald Reagan, and a Democratic Congress, the National Endowment for Democracy is a nonpartisan, nongovernmental organisation that champions, through grants to private entities in other countries, the institutions and practices of democracy. NED grants are made to organisations dedicated to promoting the rule of law, free and fair elections, a free press, human rights and other components of a genuinely democratic culture. To date, grants have been made in over ninety countries.

Although not a government entity, the Endowment is financed by an annual appropriation of Congress. The structure of NED is unusual in that most of its grants are made through four so-called "core" institutes: the National Democratic Institute for International Affairs (NDI), International Republican Institute (IRI), Center for International Private Enterprise (CIPE) and the Free Trade Union Institute (FTUI). The core institutes are affiliated, respectively, with the Democratic Party, Republican Party, United States Chamber of Commerce and the AFL-CIO, the trade union organisation.

NED is unique in that it enjoys strong support across party and ideological lines.

NED Programs

I speak of the National Endowment for Democracy because with modest funds, NED has sought to address some of the obstacles to democratisation presented by corruption by supporting programs to encourage accountability and transparency, including strengthening legislatures.

NED has assisted nongovernmental organisations with such goals in every region of the world. Let me give you a few examples.

1. *Africa*

In South Africa, the National Democratic Institute has helped enhance the effectiveness of national and regional South African legislators by organising parliamentary study missions to other countries with relevant democratic experiences.

In Cameroon, with the help of CIPE, the organisation, Research for Enterprise, Industries, Technology & Development has established a legislative and economic advisory service program to increase the accountability of elected legislators

to their constituents.

In Congo, the Zairian Association for the Defense of Human Rights sponsored, with the help of NED, a workshop on corruption and good governance for about 300 local leaders.

2. *Asia*

In China, the International Republican Institute assisted the Association for Grassroots Governance in holding training, workshops for local elected officials.

In Nepal, the National Democratic Institute received Endowment help to enable Nepali legislators to observe NDI parliamentary programs in other countries.

In Vietnam, the International Republican Institute conducted training, seminars for members and staff of the National Assembly of Vietnam on information collection and management, legislative structure and procedure and constituent relations.

In Sri Lanka, NED supported the Center for Policy Research in establishing a legislative advisory service to produce economic reports on specific measures.

3. *Eastern Europe*

In Ukraine, a group called Youth Alternative, with NED support, is selecting, training and placing thirty legislative interns on the staffs of members of the Ukrainian parliament for eight months.

In Russia, the Institute of Economic Analysis, through CIPE, received Endowment financing to publish bulletins that offer cost-benefit analyses of key economic legislation pending in the Russian parliament.

In Latvia, NDI has organised a seminar on accountability and constituent services for Members of Parliament and is publishing a handbook for nongovernmental organisations on how to participate in Latvia's legislative and policy-making processes.

4. *Latin America*

Throughout Latin America, the National Democratic Institute, with Endowment aid, is expanding its Legislative Research Series. These papers provide comparative information on topics of interest and practical questions to legislators in developing democracies.

In Mexico, with NED support, Civic Alliance, under the able leadership of Sergio Aguayo, recipient of the NED 1995 World Democracy Award, promotes wider civic participation and monitors the performance and accountability of public officials.

In Brazil, through CIPE, the Atlantic Institute of Brazil receives Endowment funds to help legislators receive technical assistance and cost-benefit analyses of economic legislation.

In Haiti, the Center for Private Enterprise and Democracy, runs a similar program with the support of NED and CIPE.

In Guatemala, the Endowment has financed a program of the IRI and the Instituto Pro-Democracia y Desarrollo (IDE) to encourage ethics and accountability among government and elected officials, including, promoting passage of a Public Ethics Act and the Inter-American Convention Against Corruption, adopted by the OAS in March 1996.

5. *Middle East*

In Turkey, NED is supporting NDI in a five-month program to help parliamentarians, political leaders and civic activists advocate ethics legislation in the Parliament.

In Kuwait, the MI is using Endowment funds to increase information available to National Assembly candidates on Kuwaiti citizens' attitudes and priorities and to improve constituent outreach capabilities for newly elected members of parliament.

These, to repeat, are illustrations of how the National Endowment for Democracy, in championing democratic institutions and opposing corruption, encourages the building of strong legislatures.

Conclusion

Let me conclude these remarks.

I have drawn on my own experience to assert that a strong,, self- confident, well-staffed legislature is an essential--I do not say the only--weapon in the war against corruption.

The Founding Fathers of the American Constitution emphatically did not provide for a direct democracy but for a republic, in which the people would be heard through representatives of their choosing.

That the United States, like nearly every country in the world, is confronted with major unresolved problems must be clear to any observer. With us, those problems include racial discrimination, too much poverty, inadequate health care, too many ineffective schools-- these are but a few of the deficiencies that continue to plague the world's richest nation. And we have certainly not yet conquered the curse of corruption. After all, we rank fifteen out of a total of fifty-two countries on Transparency International's 1997 Corruption Perceptions Index.

And as you know, a hot issue in American politics right now is the influence of money on presidential and congressional campaigns. Charges concerning the legality and propriety of contributions to political parties and candidates are the subject of congressional hearings and debate on television and in the press.

On the other hand, that so large a country, with so many differences of race, religion, ethnic origin and economic interest has advanced, with one notable exception, in the last century, in peaceful fashion, is, may I say--I hope not in chauvinistic fashion--a tribute to the effectiveness of more than two centuries of the American democracy. And one of the reasons for that effectiveness is a national legislature that, at its best, serves three functions: representative of the citizenry, maker of policy and overseer of its administration.

To paraphrase Voltaire, "If the legislature did not exist, it would be necessary to invent it."

Notes and References

[1] "Transitions to Democracy," *Society* , Volume 28, No. 4, May/June 1991, pp. 70-71.

[2] "Law in Peru," *Financial Times*, July 16, 1997.

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